IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 10 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHTA TRANSPORT CO.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 10 of 1988
MR RK PATEL for Petitioner No. 1
MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 01/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference, the Income Tax Appellate Tribunal, Ahmedabad has referred two questions for our opinion in respect of assessment year 1982-83. One question is at the instance of the revenue and other question is at the instance of the assessee. The questions read as under:-

At the instance of the revenue:

"Whether on the facts and circumstances of the case and taking into account the provisions of section 40A(2) the freight charges at the rate of Rs.5000/- per month per truck were allowable as against Rs.4000/- per month per truck allowed by the I.T.O. ?"

At the instance of the assessee:

"Whether, on the facts and circumstances of the case and taking into account the provisions of section 40A(2) the entire claim on account of freight was allowable ?"

2. The assessee is engaged in the business of plying trucks partly on its own and partly those obtained on hire from others including family members of the partners of the firm and the partners themselves. The Income-tax Officer found that the assessee had paid a sum of Rs.19,32,000/- as freight to various family members. This worked out to a sum of Rs.6000/- per month per truck although there was an agreement between the parties to pay Rs.4000/- per month per truck. The ITO accordingly disallowed a sum of Rs.6,44,000/- being 1/3rd of the total claim of Rs.19,32,000/-. In making the disallowance, the ITO invoked the provisions of section 37(1) of the Act as also section 40A(2). In appeal, the Commissioner of Income-tax Appeals confirmed the disallowance. After taking into account the totality of the various facts and circumstances, the Tribunal held that the disallowance under section 40A(2) was called for but not to the extent of 1/3rd since the payment of Rs.5000/- per month was allowed by the ITO himself for a part of the earlier assessment year. The Tribunal accordingly held that a payment of Rs.5000/- per month per truck would be a reasonable amount to be allowed. The ITO was directed to work out the necessary relief.

3. In view of the above decision of the Tribunal, both the revenue and the assessee moved for references; the assessee because the assessee had prayed for relief

to the extent of Rs.6000/- per month per truck, the revenue because the revenue insisted that only Rs.4000/per month per truck was allowable as per the agreement.

4. We have heard Mr RK Patel learned counsel for the assessee and Mr BB Naik learned counsel for the revenue.

5. Section 40 A(2)(a) provides that where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person or to any relative of a person and the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction.

6. After considering all the relevant facts and circumstances, the Tribunal has held that the payment made by the assessee-firm to the partners and relatives of the partners of the assessee-firm for taking their truck on hire at the rate of Rs.6000/- per month per truck was unreasonable, and that the reasonable amount was Rs.5000/- per month per truck. This being a finding on a question of fact, and the Tribunal having applied the correct test, our answer to the question referred at the instance of the revenue is in the affirmative i.e. in favour of the assessee and against the revenue and our answer to the question referred at the instance of the assessee is in the negative i.e. in favour of the revenue and against the assessee.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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